4-16-2014

State v. Rangen Mya Yi Appellant's Reply Brief Dckt. 41315

IN THE SUPREME COURT OF THE STATE OF IDAHO

SUPREME COURT NO. 41315
FIFTH DISTRICT TWIN FALLS COUNTY CASE NO. CR 09-3348

THE STATE OF IDAHO,)
)
Plaintiff/Respondent,)
)
vs.)
)
RANGEN MYA YI,)
)
Defendant/Appellant .)
)

APPELLANT'S REPLY BRIEF

Appeal from the District Court of the Fifth Judicial District
for the County of Twin Falls
Honorable Randy J. Stoker, District Judge, Presiding

DAVID J. SMETHERS
Attorney at Law
P.O. Box 8956
Boise, Idaho 83707

Telephone: (208) 336-1145
Facsimile: (208) 336-1263
Email: davidj@smetherslaw.com

ATTORNEY FOR APPELLANT,
Rangen Mya Yi

LAWRENCE G. WASDEN
Idaho Attorney General

PAUL R. PANTHER
Chief Criminal Division
JOHN C. McKINNEY
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010
Telephone: (208) 334-4534
Facsimile: (208) 334-2530
Email: john.mckinney@ag.idaho.gov

ATTORNEY FOR RESPONDENT,
State of Idaho

TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES

CASES

COURT RULES

I.

REPLY ARGUMENT

A. The "Single Event" Upon Which Rangen Mya Yi Has Relied Under *State v. Bacon* Is The District Court's Order Relinquishing Jurisdiction On February 5, 2013

The State has attached as "Appendix A" to its Response Brief the District Court's "Order Denying Motion to Amend Pleadings Due to Clerical Error," which is also included in the Record on Appeal at pp. 202-206. The first sentence of this Order declares, "This Court entered a separate but identical Order Relinquishing Jurisdiction **in each of the above entitled cases** on February 5, 2013." (emphasis added). But only a single case number is included in the caption of the Order – CR 2009-3348. The District Court obviously intended to include all four case numbers, but through an inadvertent omission – or clerical error - omitted the other three case numbers.

The point which the Appellant Rangen Mya Yi has raised on this appeal, in reliance upon *State v. Bacon*, 117 Idaho 679, 791 P.2d 429 (1990), is that when there is clearly only one event that gives rise to the error – in this case the simultaneous relinquishment of jurisdiction in all four cases – then in the absence of prejudice to the State, the use of an incorrect case number on an otherwise timely request for Rule 35 relief, should not operate to invalidate that request, as to the intended scope of relief that was apparently intended by the District Court itself by its own Order.

B. The State Has Failed To Address Or Apply Existing Idaho Precedent

Somewhat ironically, the State argues that Rangen Mya Yi's appeal should be denied simply

because he failed to file a Rule 35 motion under Case No. CR 2009-3348 within 120 days after the court entered its February 5, 2013 order relinquishing jurisdiction. *See*, State's Response Brief at pg. 7. Of course if that had happened, there would have been no need for this appeal. That argument simply avoids addressing the issue that has been raised. The Appellant Rangen Mya Yi did timely file a Rule 35 motion on April 12, 2013 – well within the required 120 days – but inadvertently used the wrong case number.

In both *State v. Gorham*, 120 Idaho 576, 577, 817 P.2d 1100, 1101 (Ct.App. 1991), and *State v. Torres*, 107 Idaho 895, 897, 698 P.2d 1097, 1099 (Ct.App.1984) Rule 35 jurisdiction was invoked by means of a "letter" written to a judge. Neither decision on its face indicates whether the applicant included a "case number" on the face of those letters. What we do know is that such an informal petition can be sufficient to trigger Rule 35 jurisdiction.

Both *Gorham* and *Torres* were decided by the Idaho Court of Appeals. Although persuasive, those decisions are not binding precedent on the Idaho Supreme Court. *Dachlet v. State*, 136 Idaho 752, 757, 40 P.3d 110, 115 (2002). Nonetheless, those two decisions remain binding precedent on all courts inferior to the Court of Appeals, *State v. Guzman*, 122 Idaho 981, 986-87, 842 P.2d 660, 665-66 (1992), which are bound to follow those decisions on the point of law decided until that particular issue has been reviewed by the Idaho Supreme Court. *Larson v. Larson*, 139 Idaho 970, 971, 88 P.3d 1210, 1211 (2004).

On the facts of this appeal two matters are readily apparent as relevant to the requested Rule

35 relief. First, as pertaining the filed "wrong" case number CR-2012-538, that case was dismissed within ten days after it was filed, as part of a plea bargain, such that it never presented any issues concerning Rule 35 relief. Second, the substance of Rule 35 relief requested on the face of the motion itself only related to dismissed case No. CR 2009-3348 and the three related cases that were simultaneously dismissed as a "single event," by the District Court on February 5, 2013.

In sum, the use of the incorrect case number that was inadvertently used in this instance was a number from a case that had been previously dismissed as a part of a plea bargain (CR 2012-538), and that under no circumstances would have been eligible for any Rule 35 relief, such that its use carried no possible prejudice to the State in respect to confusion or misunderstanding. The facts of this case support this argument inasmuch as the State appears to have tactically "laid-in-wait," only revealing its knowledge of Rangen Mya Yi's error by the voluntary correspondence it sent to his counsel by way of the June 17, 2013 letter that was sent by Twin Falls Deputy Prosecuting Attorney Peter M. Hatch, which was just a little more than ten days after the 120 period to file for any Rule 35 relief under CR 2009-3348 had run on June 5, 2013.

The State's remaining argument, concerning the delay in the submission of Rangen Mya Yi's supporting brief in support of Rule 35 motion, offers little substantive support for its argument, for if the motion itself is deemed to have been timely filed, then the face of that motion itself contains a request for an additional 60 days in which to submit a supporting brief. The case law is clear that so long as the motion itself is timely filed, the trial has a "reasonable time" after the 120 day period

in which to consider and decide the motion. *State v. Shumway*, 144 Idaho 580, 582, 165 P.3d 294, 296 (Ct.App. 2007), citing to *State v. Chapman*, 121 Idaho 351, 354, 825 P.2d 74, 77 (1992).

II.

CONCLUSION

The use of an incorrect case number on the caption of the Rule 35 motion was an inadvertent error that did not prejudice the prosecuting attorney's office. Under the Rule announced in *State v. Bacon*, in the absence of prejudice to the opposing party, and as based upon an action arising from a single event, that motion should have been construed as a timely filed Rule 35 motion in the four captioned cases in which all parties knew it was intended to be filed.

Respectfully Submitted this 14 day of April, 2014.

David J. Smethers
Attorney for the Appellant
Rangen Mya Yi

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 15th day of April, 2014 two true and correct copies of the foregoing **APPELLANT'S REPLY BRIEF** were served upon the following:

John C. McKinney
Deputy Attorney General
Criminal Law Division
Office of the Idaho Attorney General
Post Office Box 83720
Boise, Idaho 83720
Telephone: 208-334-2400
Facsimile 208-334-2530
Email: john.mckinney@ag.idaho.gov

Attorney for the Respondent, State of Idaho

✓ U.S. Mail, postage prepaid
___ Facsimile
___ Overnight Mail
___ Hand Delivery
___ Electronic Delivery

David J. Smethers